

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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ROBERT FIORITO,	Chapter 7
	Case No: 8-13-08164-dte
Plaintiff,	Motion for a Default Judgment

-against-

JUSTIN WEEKS,

Defendant.

-----X

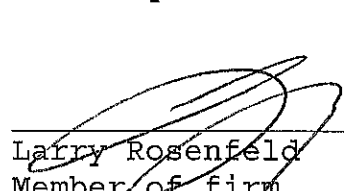
PLEASE TAKE NOTICE that upon the annexed application of Robert Fiorito, (the "Movant") by Seidner, Rosenfeld & Guttentag, LLP his attorneys, a motion will be made before the Hon, Dorothy T. Eisenberg, U.S. Bankruptcy Judge in courtroom 760 at the U.S. Bankruptcy Court, Eastern District of New York, 290 Federal Plaza, Central Islip, NY 11722 on the 24th day of February, 2014 at 1:30 P.M. of said day or as soon thereafter as counsel can be heard for: 1) an order granting plaintiff a default judgment upon Movants application which sought an order deeming his judgement in the Supreme Court of Suffolk County, Index No. 17655/10 to be non-dischargeable pursuant to 11 U.S.C.

523(a)(6); 2) such other and further relief as may be deemed just and proper in the premises.

Date: Babylon, New York
February 6th, 2014

Seidner, Rosenfeld & Guttentag, LLP
Attorneys for Robert Fiorito

By:


Larry Rosenfeld
Member of firm
403 Deer Park Avenue
Babylon, New York 11702
(631) 661-5000

To: Justin Weeks
569 Everdell Avenue
West Islip, NY 11795

Chapter 7 Trustee
Robert L. Pryor
Pryor & Mandelup LLP
675 Old Country Road
Westbury, NY 11590

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X Chapter 7
Case No: 8-13-08164-dte
ROBERT FIORITO, Application/Affirmation

Plaintiff,

-against-

JUSTIN WEEKS,

Defendant.

-----X

The application of Robert Fiorito (the "Movant") by Seidner, Rosenfeld & Guttentag, LLP., his attorneys, respectfully shows to this Honorable Court and alleges:

1. The Debtor commenced his Chapter 7 case on August 15th, 2013 (the "commencement date").

2. Prior to the commencement date Movant and his non-moving spouse (Linda Fiorito) commenced an action against the Debtor in the Supreme Court of the State of New York, County of Suffolk ("State Court Action") Index No. 17655/10, for damages suffered by Movant as a result of a) the carelessness, recklessness and negligence of the Debtor, b) the Debtor's willful and malicious assault upon the Movant and c) the unintended result of the Debtor's intentional act.

3. The Debtor defaulted during the pendency of Movant's State Court complaint (action), an order was issued (see attached), a judgment was obtained (see attached) on

Movant's cause of action against defendant, Justin Weeks, for the willfull and malicious assault upon the Movant and now the debtor apparently is seeking to discharge Movant's claim by commencing this bankruptcy case. Movant objects to the discharge of the instant debt as it is nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

4. Movant commenced an adversarial proceeding returnable on November 14th, 2013 and defendant defaulted (see attached).

5. Accordingly, Movant seeks the following relief:
a) to continue the State Court Action to attempt to collect on the judgment against the Debtor, without any further action being taken; b) that any Order discharging the debt by the Debtor to the non-Movant (Linda Fiorito) shall be without prejudice to the enforcement of Movant's judgment against the Debtor in the adversary proceeding commenced against the Debtor in which a judgment was obtained in the State Court Action to be to nondischargeable pursuant to 11 U.S.C. 523(a)(6).

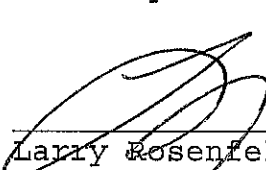
6. It is respectfully requested that the filing of a memorandum of law be waived as no novel issue of law is presented by the instant motion.

WHEREFORE, Movant respectfully requests the relief sought herein for which no previously application has been made.

Date: Babylon, New York
February 6th, 2014

Seidner, Rosenfeld & Guttentag, LLP
Attorneys for Robert Fiorito

By:


Larry Rosenfeld
Member of firm
403 Deer Park Avenue
Babylon, New York 11702
(631) 661-5000

To: Justin Weeks
569 Everdell Avenue
West Islip, NY 11795

Chapter 7 Trustee
Robert L. Pryor
Pryor & Mandelup LLP
675 Old Country Road
Westbury, NY 11590

SUPREME COURT OF THE STATE OF NEW YORK
IAS PART XI - COUNTY OF SUFFOLK
PRESENT: HON. JEFFREY ARLEN SPINNER

-----X
ORDER

LINDA FIORITO and ROBERT FIORITO,

Index No. 17655/10

Plaintiff(s),

Original Return Date:
January 14th, 2011

-against-

JUSTIN WEEKS, WARREN WEEKS
and ELLEN WEEKS,

Final Submit Date:
March 30th, 2011

MOTION SEQUENCE# 001-M6

Defendant(s).

RETURN DATE 1-14-2011

FINAL SUBMITTED DATE 3-30-2011

-----X
STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss.:

Upon the following papers numbered 1 to 7 read on this motion to strike the defendant's answers, grant judgment to the plaintiffs as against the defendants and to set a date for an inquest as to an assessment of damages and there being no opposition it is,

ORDERED that plaintiffs LINDA FIORITO and ROBERT FIORITO's unopposed motion for a default judgment in their favor and against the defendants JUSTIN WEEKS, WARREN WEEKS and ELLEN WEEKS is granted under the circumstances presented (CPLR 3126.3 AND section 202.27 of the Uniform Civil Rules for the Supreme Court). It is further

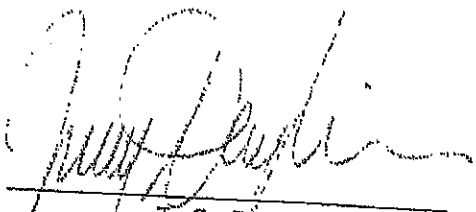
ORDERED that the Court directs that judgment be entered on behalf of plaintiffs LINDA FIORITO and ROBERT FIORITO and against defendants JUSTIN WEEKS, WARREN WEEKS and ELLEN WEEKS as to the issue of liability only. It is further

J.S.C. [ORDERED that an inquest will be held to determine the issue of damages, *upheld the finding of a Neg of Negl*;

This shall constitute the decision and order of the Court.

Serve a copy of this order on the Calendar Clerk for this part.
So ordered.

Dated: Riverhead, New York
~~March 29th~~, 2011
JUNE 25th


J.S.C.
HON. JEFFREY ARLEN SPINNER

SEIDNER, ROSENFELD & GUTTENTAG, LLP
Attorneys for Plaintiff(s)
Office & P.O. Address
403 Deer Park Avenue
Babylon, New York, 11702

JAFFE & ASHER, LLP.
Attorney(s) for Counterclaim Defendant(s)
LINDA FIORITO AND ROBERT FIORITO
600 Third Avenue, 9th Floor
New York, New York 10016

JUSTIN M. WEEKS
Attorneys for Defendant(s)
Pro Se
600 Pease Lane
West Islip, NY 11795

WARREN WEEKS
Attorneys for Defendant(s)
Pro Se
600 Pease Lane
West Islip, NY 11795

ELLEN WEEKS
Attorneys for Defendant(s)
Pro Se
600 Pease Lane
West Islip, NY 11795

STATE OF NEW YORK, COUNTY OF

I, the undersigned, an attorney admitted to practice in the courts of New York State,

SS.

☐ Certification By Attorney certify that the within
has been compared by me with the original and found to be a true and complete copy.

☐ Attorney's Affirmation state that I am

the attorney(s) of record for

action; I have read the foregoing

in the within

and know the contents thereof;

the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

SS.

I, the undersigned, being duly sworn, depose and say: I am

☐ Individual Verification in the action; I have read the foregoing

and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

☐ Corporate Verification the of

a corporation and a party in the within action; I have read the foregoing and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

The name signed must be printed hereafter

STATE OF NEW YORK, COUNTY OF SUFFOLK

SS.

(If more than one box is checked—Indicate after names type of service used.)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at Farmingville, NY

On July 19th, 2011

I served the within ORDER WITH DATE OF ENTRY

☒ Service By Mail

by mailing a copy to each of the following persons at the last known address set forth after each name below.

☐ Personal Service on Individual

by delivering a true copy of each personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein.

☐ Service by Electronic Means

by transmitting a copy to the following persons by ☐ FAX at the telephone number set forth after each name below ☐ E-MAIL at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a copy to the address set forth after each name.

☐ Overnight Delivery Service

by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name below.

MR. JUSTIN M. WEEKS

Attorney(s) for Defendant(s)

Pro Se

600 Pease Lane

West Islip, NY 11795

MR. WARREN WEEKS

Attorney(s) for Defendant(s)

Pro Se

600 Pease Lane

West Islip, New York 11795

MS. ELLEN WEEKS

Attorney(s) for Defendant(s)

Pro Se

600 Pease Lane

West Islip, New York 11795

VIA FACSIMILE TRANSMISSION

(212) 687-9639

JAFFE & ASHER, LLP.

Attorney(s) for Counterclaim

Defendant(s) LINDA FLORITO and

ROBERT FLORITO

600 Third Avenue, 9th FL.

New York, New York 10016

Sworn to before me on July 19th, 2011

LARRY ROSENFELD
Notary Public, State of New York
No. 4600192

Qualified in Nassau County
Commission Expires November 2012

KELLY O'BRIEN
The name signed must be printed hereafter

SUPREME COURT
STATE OF NEW YORK, COUNTY OF SUFFOLK

Index No. 17655 Year 2010

LINDA FIORITO and ROBERT FIORITO,

Plaintiff(s),

-against-

JUSTIN WEEKS, WARREN WEEKS and ELLEN WEEKS,

Defendant(s).

O R D E R

SEIDNER, ROSENFELD & GUTTENTAG LLP

Attorney(s) for Plaintiffs

Office and Post Office Address, Telephone

403 DEER PARK AVENUE

BABYLON, N.Y. 11702-2352

PHONE (631) 661-5000

FAX (631) 661-8005

To

Signature (Rule 130-1.1-a)

Print name beneath

LARRY ROSENFELD

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated:

PLEASE TAKE NOTICE:

☒ NOTICE OF ENTRY

that the within is a ~~corrected~~ true copy of an ORDER
duly entered in the office of the clerk of the within named court on July 1st, 2011.

☐ NOTICE OF SETTLEMENT

that an order
will be presented for settlement to the HON.
within named Court, at
on

of which the within is a true copy
one of the judges of the

at

M.

Dated, Babylon, New York
July 19th, 2011

Yours, etc.

SEIDNER, ROSENFELD & GUTTENTAG LLP

#144

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

AT AN I.A.S. TERM PART 21 OF THE
Supreme Court of the State of New York.
Held in and for the County of Suffolk at the
courthouse located in Riverhead
New York on the 8 day of Feb
2012

① favor of LINDA FIORITO and ROBERT FIORITO,
② favor of

(C/O Army)

Plaintiff(s),

JUDGEMENT

Index No.: 17655/10

-against-

Assigned Judge:
JEFFREY ARLEN SPINNER

JUSTIN WEEKS, WARREN WEEKS
and ELLEN WEEKS,

Defendant(s).

ENTERED. FEB 16 2012
AT: 1242 PM

600 Pease Lane
West Islip, NY 11795
STATE OF NEW YORK)
COUNTY OF SUFFOLK)ss.:

Upon the ORDER of this court (copy attached) dated
June 30th, 2011 and entered on July 1st, 2011 granting
plaintiff's LINDA FIORITO and ROBERT FIORITO judgment by
default against defendants, JUSTIN WEEKS, WARREN WEEKS and
ELLEN WEEKS, as to the issue of liability only and directing
that an inquest be held as to the issue of damages; the COURTS
DECISION AFTER INQUEST, dated December 7th, 2011 (copy
attached) granting plaintiff, LINDA FIORITO, damages for pain
and suffering in the amount of \$25,000.00 plus special damages
in the amount \$2,792.24 based upon plaintiff's claim of
negligence as against all defendants jointly and severally;
granting plaintiff, ROBERT FIORITO; damages for pain and
suffering in the amount of \$50,000.00 plus special damages in
the amount of \$1,355.00 for the cause of action of intentional

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EB

assault and the costs and taxable disbursements of plaintiff's being the sum of \$1,397.44 (copy attached).

Now on motion of Seidner, Rosenfeld & Guttentag, LLP.

attorneys for the plaintiff's LINDA FIORITO and ROBERT FIORITO, it is:

ORDERED, ADJUDGED and DECREED that the defendants JUSTIN WEEKS, WARREN WEEKS and ELLEN WEEKS shall pay the plaintiff LINDA FIORITO ~~and her attorneys~~ the sum of \$27,792.94 plus taxable costs and disbursements in the amount of \$698.72 plus interest from June 30th, 2011 in the amount of

1582.35 - for a total of 30,074.01 and that defendants

JUSTIN WEEKS, WARREN WEEKS and ELLEN WEEKS shall pay the plaintiff, ROBERT FIORITO, ~~and his attorneys~~ the sum of \$51,355.00 plus taxable costs and disbursements in the amount of \$698.72 plus interest from June 30th, 2011 in the amount of

2924.46 for a total of 54,978.18 in that plaintiff's have execution therefore.

ENTER:

ORDERED:

*Judgment signed at
Providence, New York
On 8th day of February,
2011.*

GRANTED

FEB 08 2012

Judith A. Pascale
CLERK OF SUFFOLK COUNTY

[Signature]
J.S.C.

HON. JEFFREY ARLEN SPINNER

Successor as Passaic de
① favor of Linda Fiorito

\$ 29,375.29
698.72 1/2 c/d

\$ 30,074.01

(Total)

\$ 54,279.46
698.72 1/2 c/d

\$ 54,978.18 (Total)

STATE OF NEW YORK, COUNTY OF

SS.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

☐ Certification By Attorney certify that the within
☐ Attorney's Affirmation has been compared by me with the original and found to be a true and complete copy.
state that I am
the attorney(s) of record for
action: I have read the foregoing
the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

in the within
and know the contents thereof;

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF SUFFOLK

SS.:

I, the undersigned, being duly sworn, depose and say: I am plaintiff

☐ Individual Verification in the action; I have read the foregoing APPLICATION
and know the contents thereof; the same is true to my own knowledge, except
☐ Corporate Verification the of
a corporation and a party in the within action, I have read the foregoing
and know the contents thereof; and the same is true to my own knowledge,
except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This
verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on October 7th, 2013
KELLY O'BRIEN
Notary Public, State of New York
No. 0108608175
Qualified in Suffolk County
Commission Expires Sept. 30, 2014

ROBERT FIORITO

STATE OF NEW YORK, COUNTY OF

SS.:

(If more than one box is checked—indicate after names type of service used.)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at

On I served the within
☐ Service By Mail by mailing a copy of each of the following persons at the last known address set forth after each name below.
☐ Personal Service on Individual by delivering a true copy of each personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:
☐ Service by Electronic Means by transmitting a copy to the following persons by ☐ FAX at the telephone number set forth after each name below ☐ E-MAIL at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a copy to the address set forth after each name.
☐ Overnight Delivery Service by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name below.

Sworn to before me on

The name signed must be printed hereafter

U.S. Bankruptcy Court
Eastern District of New York (Central Islip)
Adversary Proceeding #: 8-13-08164-dte

Assigned to: Dorothy Eisenberg

Date Filed: 10/10/13

Lead BK Case: 13-74235

Lead BK Title: Justin Weeks

Lead BK Chapter: 7

Demand: \$54000

Nature[s] of Suit: 68 Dischargeability - 523(a)(6), willful and malicious injury

Plaintiff

Robert Fiorito

represented by **Larry Rosenfeld**

Seidner Rosenfeld & Guttentag

403 Deer Park Avenue

Babylon, NY 11702

631-661-5000

Email: Lawyerlarr@aol.ocm

LEAD ATTORNEY

V.

Defendant

Justin Weeks

represented by **Justin Weeks**

569 Everdell Avenue

PRO SE

West Islip, NY 11795

SSN / ITIN: xxx-xx-7676

Filing Date	#	Docket Text
11/14/2013		Hearing Held; Appearance by Larry Rosenfeld(related document(s): <u>1</u> Complaint filed by Robert Fiorito) DEFAULT NOTED; MOTION TO BE FILED. (cmoffett) (Entered: 11/14/2013)
11/08/2013	<u>4</u> (9 pgs)	Summons Served on Justin Weeks 11/7/2013 and these additional parties: Trustee Robert L. Pryor . (dnb) (Entered: 11/08/2013)

10/10/2013		Receipt of Adversary Filing Fee - \$293.00. Receipt Number 00241661. (SW) (admin) (Entered: 10/10/2013)
10/10/2013	<u>3</u> (3 pgs)	Standing Pre-Trial Conference Order and Instructions. Signed on 10/10/2013 Preliminary Pre-Conference Statement due by 11/7/2013. (ssw) (Entered: 10/10/2013)
10/10/2013	<u>2</u> (1 pg)	Summons and Notice of Pre-Trial Conference issued by Clerk's Office against Justin Weeks Answer Due: 11/12/2013. Pre-Trial Conference set for 11/14/2013 at 02:00 PM at Courtroom 760 (Judge Eisenberg), CI, NY. (ssw) (Entered: 10/10/2013)
10/10/2013	<u>1</u> (14 pgs; 2 docs)	Adversary case 8-13-08164. Complaint by Robert Fiorito against Justin Weeks. Fee Amount \$293. Nature(s) of Suit: (68 (Dischargeability - 523(a)(6), willful and malicious injury)). (Attachments: # <u>1</u> Adversary Cover Sheet) (ssw) (Entered: 10/10/2013)

PACER Service Center			
Transaction Receipt			
12/09/2013 12:07:27			
PACER Login:	sr1595	Client Code:	1
Description:	Docket Report	Search Criteria:	8-13-08164-dte Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Headers: included Format: html Page counts for documents: included
Billable Pages:	1	Cost:	0.10

STATE OF NEW YORK, COUNTY OF SUFFOLK ss:

I, KELLY O'BRIEN, being sworn, say: I am not a party to the action, am over 18 years of age and reside in Farmingville, New York 11738.

On February 6th, 2014, I served the within **MOTION FOR A DEFAULT JUDGMENT and APPLICATION/AFFIRMATION** by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

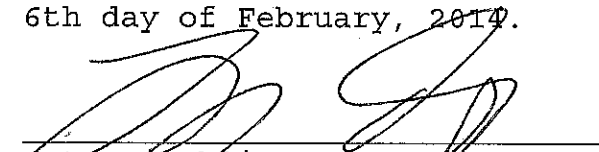
JUSTIN M. WEEKS
569 Everdall Avenue
West Islip, NY 11795

CHAPTER 7 TRUSTEE
ROBERT L. PRYOR
PRYOR & MANDELUP LLP
675 Old Country Road
Westbury, NY 11590


KELLY O'BRIEN

Sworn to before me on the

6th day of February, 2014.


Notary Public

LARRY ROSENFELD
Notary Public, State of New York
No. 4608192
Qualified in Nassau County
Commission Expires November 30, 2017